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Declaration of Gregory M. Fox
EXHIBIT B (16 pages from Clay Depo)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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COPY

SRI LOUISE COLES, ET AL.,

Plaintiffs,

VS.

No. C03-2961 TEH(JL)
C03-2962 TEH(JL)

CITY OF OAKLAND,
A MUNICIPAL ENTITY, ET AL.,

Defendants.

LOCAL 10, INTERNATIONAL LONGSHORE
AND WAREHOUSE UNION, ET AL.

Plaintiffs,

VS.

CITY OF OAKLAND, ET AL.

DEPOSITION OF CHRISTOPHER CLAY

April 12, 2005

Reported by:
ANNETTE M. SNYDER
CSR NO. 1880
fox

LUSK & SNYDER
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1 Q. When you drove out to the Oakland port that
2 day, were you expecting to see protesters?

3 A. I wasn't expecting anything that I saw. Let
4 me just say it that way. I wasn't expecting none of
5 what I saw.

6 Q. You didn't know there were going to be
7 demonstrations out at the port?

8 A. I was not aware of this.

9 Q. And you weren't given any instructions about
10 what to do if there were demonstrations?

11 A. No. There is something in our contract in
12 regards to picket lines.

13 Q. Okay. What is that?

14 A. That we are not supposed to cross them until
15 they have been determined they are -- whether or not
16 they are bona fide.

17 Q. What makes a picket line bona fide?

18 A. It's written out in the PCLD. That is our
19 contract. You would have to actually go through and see
20 what the language is.

21 Q. Do you have any recollection of any of the
22 terms in there that make a bona fide picket?

23 A. Basically, if there is a picket line there, we
24 are supposed to contact our business agent and go from
25 that point.

1 Our business agent is supposed to do his job
2 and work it out with the employer.

3 Q. Are you supposed to go to the site and contact
4 your business agent and go away, or what --

5 A. When we receive our ticket and go to our job,
6 we are supposed to go to work. We are supposed to show
7 up at the job, but we are not supposed to cross the
8 line.

9 Q. Who was the business agent at the time?

10 A. I believe it was Jake Hayman.

11 Q. Hammond?

12 A. Hayman.

13 Q. H-A-Y-M-A-N?

14 A. That is my belief.

15 The ultimate business agent would be
16 Henry Graham, because he is the president; so that is
17 the definite answer.

18 Q. When you got out to the port, you drove your
19 car across the Bridge?

20 A. Yes.

21 Q. What kind of car do you have?

22 A. At the time, I had had a 1975 primer-black
23 Pontiac Ventura.

24 Q. Muscle car.

25 A. Muscle car. You see it in the video.

1 Was there anything funny about that one, first
2 stop. I am trying to recall.

3 As a matter of fact, the first stop where I
4 slowed down in Middle Harbor, there was protesters.

5 Q. Okay. Maybe I can ask you to mark the general
6 location where you saw protesters.

7 A. That would have been in this area
8 (indicating). Okay.

9 Q. Golden Gate.

10 And since we are going to have you mark on
11 this map -- you already have -- I need to put your name
12 on it so we know which witness is marking this.

13 A. (Indicating.)

14 Q. So you have circled an area that sort of
15 circles the word "Harbor Road," in between Berths 55,
16 56, and 57-59.

17 A. This would have been a gate entrance over
18 here. There was a parking lot in this area
19 (indicating).

20 Q. Okay. You saw some protesters there?

21 A. Correct.

22 Q. Can you estimate the number of protesters you
23 saw there?

24 A. I couldn't even tell you.

25 Q. Okay. Did it look like a group of a hundred?

1 Q. That's the parking lot --

2 A. Where Number 5 is somewhat located.

3 Q. Do you enter into the gate at Number 5 and
4 then --

5 A. Correct. And then there is a parking lot
6 right there.

7 Q. And why did you not pull into the parking lot
8 that day?

9 A. There was protesters blocking it.

10 Q. Okay. When you got out -- I assume you got
11 out of your car?

12 A. Got out of my car.

13 Q. What did you do?

14 A. I started walking up toward the longshoremen
15 and looking for, basically, instruction as to what we
16 were going to do.

17 The gate was blocked, and everyone else wasn't
18 crossing it. Comment was made from another individual
19 there, another longshoreman: This is a picket line.
20 Stay over here. Stay away from the protesters. We
21 don't want -- exact words I remember hearing was: We
22 don't want to involve ourselves with those -- with them,
23 those guys.

24 Q. Do you remember who said that?

25 A. Off the top of my head, I don't. I just

1 Q. But you don't know what was going on at 4?

2 A. Correct.

3 Q. It could have been blocked and it could not
4 have been; you just don't remember?

5 A. Correct.

6 Q. And it looks like the locations are all wrong
7 in the interrogatories, but do you think the times are
8 right; that you parked your car about 7:22 a.m. and
9 stood with your fellow longshoremen around 7:30?

10 A. That's probably about correct.

11 Q. So when you got out of your car, you walked
12 south toward the east SSA gate?

13 A. Correct.

14 Q. And that's where your fellow longshoreman were
15 standing in the turn lane?

16 A. Correct.

17 Q. It was about 7:30?

18 A. Correct.

19 Q. Do you remember how far it was from your car,
20 how long a distance you walked?

21 A. It wasn't that long. Like I said, 5,
22 6 car lengths, 7 car lengths at the most, given the
23 gaps.

24 Q. And then when you got there, somebody was
25 saying: This is a picket line. We don't want to get

1 interaction?

2 A. Byron Moore, he is on executive board. I
3 don't know who else that was out there may have been a
4 Union official.

5 Q. You yourself were not a Union official at the
6 time?

7 A. No.

8 Q. Once you joined your fellow longshoremen, what
9 did you all do?

10 A. We were just standing around talking. And we
11 were looking at the police, and were looking at the
12 protesters, and we were discussing -- we hoped that they
13 would hurry up and do this, you know. We want to go to
14 work.

15 We actually started laughing at some of the
16 protesters. They were having a jolly old time over
17 there with their music and everything. They had a whole
18 little step routine going on.

19 Q. Where was this taking place?

20 A. At the gate.

21 Q. Number 5 or Number 4?

22 A. Number 5.

23 Q. When did you first become aware of the police
24 in the area?

25 A. They seemed like they were there while, you

1 know, I pulled up and everything. They were off in the
2 distance a little bit. I guess they would be somewhere
3 near APL at that point.

4 Q. That's the APL gate -- west Gate Number 3.

5 A. Number 3. Somewhere over there by Number 3.

6 Q. Were you able to see them very clearly?

7 A. No. They were in a distance. You know, they
8 are around that -- actually, you can actually see there
9 is a bend here.

10 Around the bend, and, you know, they are back
11 there (indicating). You kind of see them.

12 Q. But they weren't up at the Number 4 or 5 gate?

13 A. No, not as yet. There was a couple of
14 straggling officers that you see on foot approaching.

15 Q. Approaching from where?

16 A. From that -- somewhere between 3 and 4.

17 Q. They were coming from 3 to go to 4, or --

18 A. Or they were in between the two.

19 Q. Could you tell which gate they were going
20 toward?

21 A. They were coming toward us. They were coming
22 towards, you know, towards SSA.

23 Q. There was just a couple of officers?

24 A. Yes.

25 Q. Were you able to see what the police were

1 doing down near Gate Number 3?

2 A. No.

3 Q. Just aware they were there and nothing in
4 particular drew your attention to them?

5 A. No.

6 I do recall hearing their bikes rev up at one
7 point. That was while they were down were between 3
8 and 4.

9 Q. And after, that called your attention over to
10 that area?

11 A. Yeah.

12 Q. When you looked over there, what did you see?

13 A. Began to see the bikes come up where they were
14 in line.

15 Q. You saw the bikes form a line across the
16 street?

17 A. Correct.

18 Q. Do you know what time that was?

19 A. No, I don't. Not at that time.

20 Q. Before that time, had you heard the police
21 issue any dispersal orders?

22 A. No.

23 Q. After the police lined up across the street
24 with the motorcycles, did you hear any dispersal orders?

25 A. No.

1 Q. Do you know what I mean by "dispersal order"?

2 A. Get out of here; it's time to go.

3 Keep in mind: It wasn't something I am
4 listening for, I am listening to hear. I am here to go
5 to work. If there was anything going on, well, like I
6 am here to work. That is the only thing going through
7 my mind. I am not being approached by police. I am not
8 doing anything but waiting to go to work.

9 Q. I take it even if you had heard a dispersal
10 order, you would not have thought it applied to you?

11 A. Correct. Because I am supposed to be there.
12 I have a little piece of paper that says: Go to SSA.

13 Q. Did you, at any time that day, hear a
14 dispersal order?

15 A. Not that I recall.

16 Q. After the motorcycle officers began to form a
17 line -- and by the way, were they close to the Number 3
18 point?

19 A. No. They would have been closer to the -- in
20 between, between 3 and 4.

21 Q. So they had started already to move forward,
22 the police had, and then they formed a motorcycle line?

23 A. Okay.

24 Q. Is that -- I am asking if that is your
25 recollection?

1 A. They were already in the process of moving
2 forward in this area.

3 Q. And what were the demonstrators doing when the
4 police were moving forward?

5 A. Still doing their dancing, and chanting, and
6 singing. You know, they were having a good time.

7 Q. Were any demonstrators moving from Gate
8 Number 3 toward Gate Number 4?

9 A. I don't recall that. I wasn't -- you know, I
10 wasn't really paying attention to the demonstrators
11 running or walking around me.

12 Q. And really, at that point, not to the police,
13 either?

14 A. No, no. I am looking at the group which is
15 singing and dancing, walking around in a circle, saying:
16 God, I hope they hurry up.

17 Q. Okay. When the police started -- did the
18 motorcycle line at this point start moving forward?

19 A. Yeah. As they -- what I had noticed is, as
20 they had revved -- I guess it was the second time --
21 they had pulled forward.

22 Q. Okay. Do you know how many officers --

23 A. I couldn't tell you.

24 Q. -- all together?

25 A. I don't know.

1 area.

2 Q. What were you wearing at the time?

3 A. I was wearing a jacket. I can provide that,
4 if necessary. And I was wearing these yellow pants
5 right here (indicating).

6 Q. And what were you wearing under your jacket?

7 A. A shirt. I don't recall which shirt it was
8 that day. Probably one of my super-hero shirts.

9 Q. Spidy?

10 A. Just being honest.

11 Q. Your blue jacket --

12 MS. NISENBAUM: Didn't have the cap on.

13 THE WITNESS: Navy blue.

14 As a matter of fact, I have it down in the
15 car. I didn't bring it up with me.

16 Q. Was your jacket in any way torn or marked?

17 A. No. My pants are.

18 Q. And so the jacket itself, if we looked at it,
19 wouldn't show anything?

20 A. Wouldn't show anything. The pants will,
21 though.

22 Q. And so you're right in front of your car --
23 you're the fourth or fifth car -- when you get hit in
24 the buttocks?

25 A. I was right before my car. I didn't make it

1 Q. Did you have to back up?

2 A. I slammed it in reverse and literally spun the
3 car around.

4 Q. Race driver?

5 A. Yeah, yeah.

6 Q. What happened when you got to --

7 A. I pulled up into Middle Harbor Road and I --

8 Q. In the area you circled previously?

9 A. Correct.

10 Q. Where the 20 or 30 protesters were?

11 A. Correct.

12 And I stopped the car there. I see my partner
13 and a number of our longshoremen standing on the side of
14 the road. And I alerted them that the police were
15 shooting.

16 At this time, an officer comes up, approaches
17 the vehicle on my right side, on the passenger side, and
18 he says -- I don't recall his exact words, but he said
19 something about: What is going on? And I said: I have
20 just been shot. He said: Well, are you one of the
21 protesters? I said: No, I am longshoreman. And I'm
22 one of the workers here. He said: Oh, shit.

23 That was his exact words. I said: I said:
24 You know, how long is this going to hurt? What is going
25 on? And he says: Don't worry about it. It's just like

1 shooting?

2 A. I told them that prior to my parking my car.

3 Q. You rolled your window down and told them
4 "They are shooting," and parked your car?

5 A. Right.

6 Q. Did the officer shoot you? Did they approach
7 you? Did that happen before you --

8 A. Before I parked.

9 Q. The officer approached.

10 Can you give us any description?

11 A. White male, 230 pounds, around that area.

12 Rather larger guy. He had glasses. I don't recall his
13 name. I don't recall his badge number. I don't -- I
14 wasn't really looking for that. I am more scared at
15 this point than anything else.

16 Q. Was he on a motorcycle or on foot?

17 A. On foot.

18 Q. Do you remember his hair color?

19 A. Brownish color; dark brown.

20 Q. Anything else you recall about him?

21 A. No.

22 Q. And was he professional and courteous to you?

23 A. I don't really know. I felt like -- I felt

24 like if I was a protester -- if I would have answered

25 and -- I am a protester, he probably would have pulled

1 me out of the car, because when he had started asking me
2 the questions, you know, it was more demanding than:
3 Are you all right? You know, it wasn't a sympathetic
4 question of any sort. It was: I'm an officer and here
5 I am.

6 Q. Who are you and what are you doing here?

7 A. Right. What are you, and what are you doing
8 here?

9 That was the feeling.

10 Q. Once you identified yourself --

11 A. Then his tone changed.

12 Q. And he was pleasant?

13 A. He started with, "Oh, shit" and then it went
14 somewhat pleasant for what an officer does.

15 Q. He was trying to tell you: Don't worry. It
16 will be okay; it is just a charley horse?

17 A. Yeah.

18 Q. Was that the extent of the conversation?

19 A. That was the extent of the conversation.

20 Q. Did the officer walk over --

21 A. He backed off.

22 Q. He was by himself?

23 A. He was with the rest of the officers.

24 Q. When he walked up, was he by himself?

25 A. By himself.